

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

v.

LEE MARVIN HARPER, JR.

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CRIMINAL NO. 1:04CR37 LG

**ORDER DENYING MOTION FOR A
REDUCTION OF TERM OF IMPRISONMENT**

BEFORE THE COURT is the Motion [125] For A Reduction Of Term Of Imprisonment filed *pro se* by the Defendant, Lee Marvin Harper, Jr. In the Court's Order entered August 26, 2008, Harper received a reduction in his sentence from 130 months to 121 months imprisonment due to the retroactive application of amendments to the sentencing guidelines for offenses involving cocaine base. Ct. R. 124. Previous to this reduction, he had received a reduction from the initially imposed 180 months imprisonment to 130 months pursuant to FED. R. CRIM. P. 35(b). Ct. R. 106.

In this Motion, Harper requests reconsideration of his sentence, because both the Public Defender and the United States Attorney recommended a sentence less than 121 months imprisonment. In his Motion For Reduction Of Sentence, Ct. R. 120, the Public Defender calculated Harper's new guideline range as 97 to 121 months. *Id.* at 1. He then requested a sentence of 97 months. *Id.* at 2. The Government's response concurred with the calculation of Harper's new guideline range at 97 to 121 months, but requested a sentence of 105 months, above the minimum within that range. Ct. R. 122 p. 1-2.

The Court was not bound by the recommendations of either party, because it may use its own discretion in making a sentencing decision. *See Gall v. U.S.*, 128 S. Ct. 586, 598 (2007)

(abuse-of-discretion standard of review applies to all sentencing decisions). The Court considered the facts and circumstances of this case in deciding on an appropriate sentence reduction. Harper's sentence of 121 months imprisonment is within the guideline range and therefore presumptively reasonable. *U.S. v. Rodriguez-Rodriguez*, 530 F.3d 381, 389 (5th Cir. 2008). Harper's request that the Court reduce his sentence further will be denied.

IT IS THEREFORE ORDERED AND ADJUDGED that the Motion [125] For A Reduction Of Term Of Imprisonment, filed by Defendant Lee Marvin Harper, Jr., is **DENIED**.
SO ORDERED AND ADJUDGED this the 28th day of July, 2009.

s/ Louis Guirola, Jr.
LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE